

**TOWNSHIP OF WORCESTER  
MONTGOMERY COUNTY, PENNSYLVANIA**

**ORDINANCE 2017-265**

**AN ORDINANCE AUTHORIZING THE PARTICIPATION OF WORCESTER TOWNSHIP IN THE DELAWARE VALLEY INSURANCE TRUST FOR THE PURPOSE OF POOLING LIABILITY RISKS WITH OTHER TRUST PARTICIPANTS IN ACCORDANCE WITH THE PENNSYLVANIA POLITICAL SUBDIVISION TORT CLAIMS ACT AND THE PENNSYLVANIA INTERGOVERNMENTAL COOPERATION LAW.**

The Board of Supervisors of Worcester Township, Montgomery County, Pennsylvania do hereby **ENACT and ORDAIN:**

Section 1. That the Township Manager of Worcester Township ("Township") is hereby authorized to execute the Trust Agreement and any other agreements necessary for its participation in the Delaware Valley Insurance Trust. The Delaware Valley Insurance Trust Agreement is attached hereto as Exhibit "A" and incorporated herein by reference. The Trust Agreement attached hereto is on file for inspection and review at the Township offices, 1721 Valley Forge Road, Worcester.

Section 2. That the participation of the Township in the Delaware Valley Insurance Trust is authorized for the following purposes:

- a) To provide adequate and affordable insurance coverage to each Trust Participant at the lowest possible cost by pooling or sharing of certain liability risks;
- b) To reduce the amount and frequency of losses incurred by each Trust Participant which are covered under the Trust Coverage Document;
- c) To minimize costs incurred by Trust Participants in the handling and litigation of claims; and
- d) To protect each Trust Participant from the volatility and high premiums of the commercial insurance market.

Section 3. As set forth in the Trust Agreement and as otherwise stated herein, the following conditions apply to the participation of the Township in the Delaware Valley Insurance Trust:

- a) That each Trust Participant must meet the admission and eligibility requirements set forth therein.
- b) That each Trust Participant agrees to pay all annual premiums, contributions and assessments when due as provided in the Trust Agreement and By Laws;
- c) That each Trust Participant uses its best efforts to provide appropriations for the payment of any contributions, premiums and assessments required by the Trust;
- d) That each Trust Participant institute any and all safety regulations, loss prevention measures or risk management procedures as may be required for the purpose of minimizing or

eliminating hazards or risk that could contribute to losses;

- e) That each Trust Participant cooperate fully with the Trust's service and fiscal agents, attorneys, claims adjusters and any agents or employees of the Trust with respect to the investigation, defense and settlement of claims;
- f) That each Trust Participant designate a contact person to be responsible for all contacts with the Trust;
- g) That each Trust Participant provides any information to the Administrator or Board of Trustees as may be required to effect the purposes and objectives of the Trust.

Section 4. That the Township agrees to participate in the Delaware Valley Insurance Trust for a minimum period of two (2) years and thereafter may withdraw under the following conditions, among others, under the Trust Agreement:

- a. An opinion is rendered by the Trust certified actuary that withdrawal will not result in the number of Participants falling below the minimum required to assure the fiscal and actuarial soundness of the Trust itself;
- b. That the withdrawing Participant is not then in default of its obligation to pay premiums, contributions or assessments;
- c. That the withdrawing Participant shall forfeit any and all of its rights to any dividends and Rate Stabilization Fund monies to which it may otherwise be entitled during the last year of the Participant's membership in the Trust and at all times thereafter;
- d. Upon effective date of withdrawal, or at any time thereafter, a Participant may be required to pay assessments as required by the Board of Trustees in accordance with the Trust Agreement and the By-Laws based on any deficits which were caused by any claims paid while that Participant was provided coverage under the Trust Coverage Document; and
- e. That the Board of Trustees shall have received a certification from the Trust actuary that the withdrawal of the Participant will not reduce the actuarial soundness of the Trust and, if any municipal debt has been incurred by the Participants to finance any portion of the Trust reserves, an opinion is obtained from bond counsel that such withdrawal will not adversely affect the tax exempt status of any interest paid and any debt incurred by the Participants, or any legal entity created for the purpose of incurring such debt.

Section 5. The effective date of the participation of the Township in the Delaware Valley Insurance Trust will be February 17, 2017 or thereafter.

Section 6. Each Trust Participant delegates to the Board of Trustees of the Delaware Valley Insurance Trust the powers enumerated in the Trust Agreement, including the right to expel Participants under certain conditions.

Section 7. As set forth in the Trust Coverage Document, the Township shall be provided coverage for the following risks:

- a. Commercial General Liability;

- b. Business Automobile Liability;
- c. Police Professional/Law Enforcement;
- d. Public Officials Liability; and
- e. Any other risks specified in the Trust Coverage Document.

Section 8. All contributions, premiums and assessments paid by the Township shall be made with funds appropriated by the Township for that purpose. If permitted under state and federal law, the Township may incur debt for the purpose of financing any excess insurance coverage, as set forth in the Trust Agreement.

Section 9. The organizational structure of the Trust shall consist of a Board of Trustees, an administrator, a claims administrator/loss control consultant and various service agents appointed by the Board of Trustees in accordance with the Trust Agreement.

Section 10. As set forth in the Trust Agreement, the funds required for the operation of the Trust shall be provided by the Trust Participants through annual appropriations.

Section 11. The Delaware Valley Insurance Trust commenced operations on January 1, 1989 and will continue until terminated by two-thirds (2/3) vote of all Trust Participants.

Section 12. Coverage under the Trust shall be provided from January 1 through December 31 of each Trust year to all Trust Participants in accordance with the Trust Agreement.

Section 13. As a condition of participating in the Delaware Valley Insurance Trust, the Township agrees to comply with the following conditions:

- a. That it will make its initial contribution upon admission to the Trust for creation of the restricted surplus fund needed to protect Trust Participants against potentially catastrophic losses;
- b. That it will timely pay all annual premiums and assessments as may be required by the Board of Trustees;
- c. That it will appoint a representative to sit on the Board of Trustees and designate a contact person for the purpose of communicating with the Trust or its representatives;
- d. That it will not withdraw from the Trust for a period of two (2) years following its admission to the Trust;
- e. That it may withdraw from the Trust only upon satisfaction of the conditions set forth in the Trust Agreement;
- f. That it agrees to perform all covenants contained in the Trust Agreement and delegate to the Board of Trustees the powers and authorities enumerated in the Trust Agreement;
- g. That it will comply with all the conditions set forth in the Trust Coverage Document governing the handling of claims, including the defense and settlement thereof;

- h. That it will appropriate the funds needed to pay all contributions, premiums and assessments as may be required by the Board of Trustees in accordance with the Trust Agreement;
- i. That it will cooperate with the Trust, its agents or employees and provide the Trust with all information it needs for the operation of the Trust, including any underwriting or claims data which it may be requested by the Board of Trustees or their designee.

Section 14. The Delaware Valley Insurance Trust is empowered to enter into contracts for policies of group insurance and employee benefits, including Social Security, for its employees.

Section 15. This Ordinance is being enacted pursuant to [Insert applicable municipal code citations].

Section 16. All ordinances or parts of ordinances inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specifically repealed. This Ordinance shall in no other way alter or modify the Township Code except as specifically stated herein. Any other terms and provisions of the Code that are unaffected by this Ordinance are hereby reaffirmed and ratified.

Section 17. The provisions of this Ordinance are severable, and if any section, sentence, clause, part or provision herein shall be held illegal, invalid or unconstitutional by any Court of competent jurisdiction, such decision of the Court shall not effect or impair the remaining sections, sentences, clauses, parts or provisions of the Ordinance. It is hereby declared to be the intent of the Township that this Ordinance would have been adopted as if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

Section 18. Nothing in this Ordinance shall be construed to effect any suit or proceeding pending in any court, or any rights acquired or liability incurred, or any permit issued, or any cause or causes of action existing under the ordinances of the Township prior to enactment of this Ordinance.

Section 19. This Ordinance shall become effective upon enactment.

**ENACTED AND ORDAINED** by the Supervisors of the Township of Worcester, Montgomery County, Pennsylvania on this 15<sup>th</sup> day of March, 2017.

**FOR WORCESTER TOWNSHIP**

By: \_\_\_\_\_  
Susan G. Caughlan, Chair  
Board of Supervisors

Attest: \_\_\_\_\_  
Tommy Ryan, Secretary

# EXHIBIT A

## DELAWARE VALLEY INSURANCE TRUST AGREEMENT

This is the Delaware Valley Insurance Trust Agreement (the "Trust Agreement"), dated as of January 1, 1989, by and among local agencies as hereinafter defined) of the Commonwealth of Pennsylvania which are now and hereafter parties signatory to this Agreement and listed in Appendix "A" hereof, as may be amended from time to time, and those Trustees (as hereinafter defined) listed in Appendix "B" hereof, as may be amended from time to time.

WITNESSETH:

WHEREAS, certain municipalities, authorities and intergovernmental organizations in the Commonwealth of Pennsylvania desire to pool together to provide insurance protection and benefits to themselves and their employees through the purchase of insurance and/or by self-insuring for insurable risks; and

WHEREAS, the Parties to this Agreement are also "local agencies" within the meaning of the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa. C.S.A. §8541 et seq.; and

WHEREAS, the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa. C.S.A. §8541 et seq., authorizes local agencies of the Commonwealth of Pennsylvania, including those who are parties to this Agreement, to pool or share their insurance risks (as hereinafter defined) by creating self-insurance risk pools or plans, and/or entering into joint agreements for the purpose of purchasing commercial insurance; and

WHEREAS, the local agencies of the Commonwealth of Pennsylvania who are parties to this Agreement are also authorized to create self-insurance risk pools and to enter into joint agreements for the purchase of commercial insurance by the Pennsylvania Intergovernmental Cooperation Law, 53 Pa.C.S.A. §2301 et seq.; and

WHEREAS, the local agencies of the Commonwealth of Pennsylvania who are parties to this Agreement wish to pool together to provide insurance protection against certain insurance risks by creating the Delaware Valley Insurance Trust and hereby execute this Trust Agreement and the Delaware Valley Insurance Trust Participation Agreement, which is incorporated herein by reference; and

WHEREAS, the local agencies who are parties to this Agreement (hereinafter referred to as the "Participants" or "participating municipalities") have hereby created the Delaware Valley Insurance Trust for the purpose of providing all Participants with comprehensive general liability, business automobile liability, police professional/law enforcement liability, public officials liability, property damage insurance protection and all other coverages set forth in the Trust Coverage Document which is hereby incorporated by reference; and

WHEREAS, the Participants have hereby created the Delaware Valley Insurance Trust for the purpose of providing both primary and excess coverage, if possible, and to provide claims administration and loss control services for all Participants, all for the purpose of minimizing claims losses and reducing premiums and costs associated with claims handling and administration; and

WHEREAS, funds will be paid initially by all Participants and continue to be paid from time to time by Participants to a Board of Trustees (the "Trustees"), which funds will constitute trust funds to be held for the exclusive benefit of the Participants, including payment of certain expenses on behalf of the Participants; and

WHEREAS, all Participants wish to enter into this Trust Agreement with a promise to make an initial contribution and a first annual Premium payment by no later than January 1, 1989, or at some other date to be determined by the Board of Trustees; and

WHEREAS, the Participants desire the Trustees to collect, receive, hold, invest, reinvest, manage, dispose of, distribute, and otherwise to administer the Trust funds, and the Trustees have indicated their willingness to do so, all pursuant to terms of this Agreement; and

WHEREAS, the Delaware Valley Insurance Trust is hereby designated as a "business trust" pursuant to 15 Pa. C.S.A. §9501 with the express understanding that such designation will not have any effect upon the tax exempt status of the Trust under federal or state law;

WHEREAS, the Trustees and the Participants desire to establish the terms and conditions under which the Trust will be operated.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged by each party, one to the other, the Participants do hereby give and assign in trust the initial sums described in the attached Schedule 1 and all income and profits therefrom, and such other sums, income and profits as hereinafter may be made part of the Trust, to the Trustees, and the Trustees hereby accept the trusts herein contained and the funds described in the attached Schedule 1 and declare that they will administer, manage, collect, receive, dispose of, and distribute such trust property for the benefit of the Participants as hereinafter provided, all parties agreeing to abide by the terms and covenants contained in this Agreement, as follows:

### ARTICLE I - DEFINITIONS

1.01 Definitions. The terms defined in this Section 1.01 and in the preambles hereto (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement and of any amendment or supplement hereto shall have the respective meanings specified in this Section 1.01 and said Preamble.

Actuary - The actuarial firm selected by the Trustees, whose duties shall include, but not be limited to, the evaluation of underwriting or loss data submitted by eligible municipalities and the rendering of opinions and certifications as required by the Board of Trustees in accordance with the Trust

Agreement and By-Laws.

Adjustments - A decrease or increase of a participating municipality's annual premium as determined by the Board of Trustees in accordance with the Trust Agreement and By-Laws.

Administrator or Trust Administrator - The individual or entity responsible for the day to day operations of the Trust.

Agreement or Trust Agreement - The Delaware Valley Insurance Trust Agreement, as set forth herein and as amended from time to time.

Application - The documents which must be submitted by all eligible municipalities for admission to the Trust, including, but not limited to, any underwriting or loss data, or any other information which an eligible municipality may be required to provide for admission to the Trust.

Assessments - Any additional payment(s) to the Trust which a Participant may be required to make as determined by the Board of Trustees in accordance with the Trust Agreement and By-Laws if the Surplus is exhausted by, among other things, the payment of catastrophic claim(s)

Board of Trustees - The governing body of the Delaware Valley Insurance Trust whose members or Trustees are selected in accordance with the Trust Agreement and By-Laws.

By-Laws - The By-Laws governing the operation of the Trust as adopted and amended by the Board of Trustees in accordance with this Agreement.

Contact Person - An individual designated by each Participant as a liaison between that Participant and the Board of Trustees, and the Trust's officers, employees or agents.

Covered Occurrences - Those occurrences or events for which the Trust shall assume liability as set forth in the Trust Coverage Document.

Covered Party - Any person or entity defined as such in the Trust Coverage Document.

Coverage Period - The one year period in which each Participant will be provided coverage under the Trust Coverage Document in exchange for the payment of an annual premium for that coverage period.

DVLISC - Delaware Valley Liability Insurance Study Committee.

Declarations of Coverage - Specific types of coverages, including applicable limits and deductibles, provided by the Trust to each Participant. This information is set forth in the Declarations issued to each participant.

Deficit - When expenses, claims payments, claims reserves and claims incurred but not reported (IBNR) for any coverage period exceed the total premiums collected for that period.

Effective Date - A date determined by the Trustees on which a Participant will be provided insurance coverage as set forth in the Declarations.

Executive Committee - The executive committee appointed by the Board of Trustees in accordance with Section 2.07 hereof.

Expulsion - The involuntary removal or termination of a Participant from the Trust by action of the Trustees as provided in Section 3.05 hereof and any applicable By-Laws.

Fiscal Agent - A financial institution selected by the Board of Trustees to handle and invest the monies held in the various accounts administered by the Trust.

Initial Contribution - The initial payment made by each Participant upon admission to the Trust.

Initial Participants - Participants who are initial signatories to this Agreement and become Participants in the Trust on or before January 1, 1989.

Insurance - Various forms of coverage provided to Participants by the Trust, including coverage for general liability, business automobile liability, law enforcement liability, public officials legal liability and property damage coverage, as more fully described in the Trust Coverage Document. "Insurance" includes excess insurance and reinsurance.

Local Agency - Any municipality, authority or intergovernmental organization which is a "local agency" within the meaning of the Pennsylvania Political Subdivision Tort Claims Act.

Municipality - Any political subdivision of the Commonwealth of Pennsylvania as defined in the Pennsylvania Political Subdivision Tort Claims Act. This definition includes any townships or boroughs eligible for participation in the Delaware Valley Insurance Trust.

Operating Fund - Funds dedicated for the general purpose of paying claims and all administrative expenses of the Trust.

Participant - Any local agency of the Commonwealth of Pennsylvania eligible to participate in this Trust which becomes a party to this Agreement and the participation of which has not been terminated or cancelled in accordance with the Trust Agreement and By-Laws.

Premium - The amount of money determined by the Board of Trustees and charged to each participant during the Trust Year, on an annual basis in exchange for the coverage provided to each participant under the Trust Coverage Document.

Rate Stabilization Fund - A Fund established by the Trust which can be used by Participants to defray the cost of their annual premiums.

Service Agents - One or more service companies or consultants employed by the Trustees to be responsible for underwriting matters, claims administration, loss control, accounting and such other duties as determined by the Board of Trustees and specified by contract.

Service Contract - Any contract for service between the Trustees and a Service Agent.

Surplus - Net worth of the Trust since the Trust's inception.

Termination Premium - Payment required of all Participants who are expelled from the Trust, as determined by the Board of Trustees.

Trust - The Delaware Valley Insurance Trust.

Trust Coverage Document - The document which sets forth the actual coverages provided by the Trust, as amended from time to time.

Trust Year - The first fiscal year of the Trust shall commence on January 1, 1989 and end on December 31, 1989. Thereafter the Trust fiscal year shall run from January 1 to December 31 of all subsequent years.

Trustee - Each person serving as a member of the Board of Trustees referred to from time to time, collectively as the "Trustees" or "Board of Trustees" or "Board".

Underwriting Consultant - Advisor or firm selected to assist Trust with underwriting and rating requirements for current Participants and new applicants.

Underwriting consultant shall consult with Trust Actuary as needed and as required.

1.02 Interpretation. The words "hereof", "herein", "here-under", and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Headings or titles to Articles, Sections, and other subdivisions of this Agreement are for convenience only and shall be given no effect, meaning, or construction whatsoever and shall not define or limit any provision of this Agreement.

## ARTICLE II - TRUSTEES

### 2.01 Qualifications of a Trustee.

(a) A Trustee shall be either (1) an elected or appointed official of a Participant, including any Township or Borough Managers, or (2) an employee of a

Participant with expertise in finance or risk management.

(b) A Trustee shall not be employed by or have any direct or indirect financial interest in any Service Agent or other organization providing service to the Trust.

#### 2.02 Composition of Board of Trustees.

The Trust shall be governed by a Board of Trustees. No municipality shall be represented by more than one Trustee on the Board of Trustees. However, a Participant may authorize its Trustee to appoint an Alternate for a scheduled meeting or event of the Board. An Alternate shall have the full voting rights and powers granted to the Trustee.

All members of the initial Board of Trustees shall be appointed to serve a term commencing upon September 1, 1988 and expiring on December 31, 1989.

#### 2.03 Election of Trustees.

The initial Board of Trustees shall provide in the By-Laws for the form and method of election of subsequent Trustees.

2.04 Resignation of a Trustee. A Trustee may resign by giving at least thirty (30) days prior notice in writing sent by registered mail to the Chairman of the Trustees. Such notice shall state the date said resignation shall take effect, and such resignation shall take effect on such date.

#### 2.05 Removal of Trustees.

A Trustee may be removed from office in accordance with the By-Laws if he fails, or subsequently ceases, to meet the qualifications of Section 2.01 hereof; and may be removed if he fails to attend three (3) consecutive meetings of the Board or is terminated for cause by a 2/3 vote of the Trustees. Upon removal of a Trustee, the position shall be filled pursuant to Section 2.06 hereof.

#### 2.06 New Trustees.

(a) In the event a Trustee resigns, is removed or is otherwise unable to serve, the Participant represented by that Trustee shall appoint a replacement to complete the original Trustee's term of office.

(b) Any Trustee, upon leaving office, shall forthwith turn over and deliver to the principal office of the Trust, any and all records, books, documents or other property in his possession or under his control which belong to the Trust.

#### 2.07 Board Chairman and Executive Committee.

The Trustees shall elect a Chairman of the Board by simple majority vote whose duties shall be set forth in the By-Laws. The Trustees shall also appoint an Executive Committee by majority vote consisting of not less than five (5) Trustees, two of whom will be the Chairman and Vice Chairman of the Board of Trustees. The Trustees may delegate in writing to the Executive Committee such powers and duties as the Trustees deem appropriate and desirable except the exercise of those powers for which a two-thirds majority vote of the Trustees is required. The Executive Committee shall meet as determined by the Chairman of the Board of Trustees.

### ARTICLE III - PARTICIPANTS

#### 3.01 Eligibility Requirements.

(a) Participation in the Trust shall be limited to authorities, intergovernmental organizations and municipalities of the Commonwealth of Pennsylvania with any such municipalities limited to those populations of under 100,000 persons.

(b) Each Participant shall meet the underwriting standards established by the Board of Trustees.

(c) Each Participant shall have a loss or claims history which does not present an undue risk to the actuarial soundness of the Trust.

(d) Each Participant must receive a positive recommendation from the Underwriting Consultant or loss control manager prior to acceptance. This recommendation will be based upon a loss control survey conducted by the underwriting consultant or loss control manager which will include an evaluation of the applicant's loss or claims history and risk management procedures.

(e) Each applicant must be professionally managed, utilizing International City management Association ("ICMA") Recognition Criteria, or satisfy equivalent management criteria adopted by the Executive Committee.

(f) Each successful applicant must comply with the guidelines established by the loss control consultant or manager employed by the Trust.

(g) Each applicant must agree to make a commitment to participate in the Trust for a minimum period of at least two (2) years, which period is necessary to assure the fiscal and actuarial soundness of the self-insurance risk pool.

The Board of Trustees may establish additional requirements for participation in the Trust by majority vote.

#### 3.02 Approval of Participants.

(a) Initial Participants who are signatories to this Agreement as of January 1, 1989 must have submitted an application to the Delaware Valley Liability Insurance Study Committee ("DVLISC"); such application must have been approved by majority vote of that Committee. Upon approval of an applicant, the DVLISC must have certified in writing that the successful applicant has satisfied all the admission criteria. The effective date for admission of all initial Participants shall be January 1, 1989. The coverage period for all Initial Participants under the Trust Coverage Document shall commence on January 1, 1989 upon payment of an initial contribution and annual premium.

(b) All subsequent applicants must be approved by two-thirds (2/3) majority vote of the Board of Trustees. The Administrator must certify in writing that the successful applicant has met all the criteria for admission to the Trust.

(c) All applicants, including initial Participants, must pay an application fee which shall be based upon the actual cost of processing the application and completing the loss control survey for each applicant.

(d) Each application must contain the following information:

(1) Underwriting and claims data for a three (3) to five (5) year period prior to submission of the application;

(2) Detailed information regarding the organization, personnel and administration of the applicant, as requested by the Underwriting Consultant;

(3) Names of all previous insurers and premium data for the three (3) to five (5) year period prior to submission of the application;

(4) Operating budgets and other financial information as may be required by the Underwriting Consultant for a period of one to five (5) years prior to submission of the application;

- (5) Any other information required by the Board of Trustees or any of the Trust's officers, attorneys, service agents, consultants or employees.
- (e) Each Participant shall submit evidence satisfactory to the Trustees of approval for participation by its governing body, including any ordinances which may be required under state law.
- (f) If municipal debt has been incurred for the financing of any self-insurance reserves, whether primary or excess, then no municipality shall be admitted to the Trust unless an opinion is obtained from Bond Counsel that admission of that municipality will not impair the tax exempt status of any outstanding indebtedness.
- (g) Upon approval of all subsequent Participants by the Board of Trustees, the Board shall establish the effective date for the insurance coverage provided to that Participant under the Trust Coverage Document.
- (h) Upon execution of this Agreement by a Participant, such applicant shall become a Participant in the Trust and shall be bound by all terms and conditions hereof, including the payment of Premiums when due.

### 3.03 Premiums.

- (a) Premiums shall be established by the Trustees in consultation with the Underwriting Consultant. Annual premium estimates shall be established at least thirty (30) days before commencement of the Trust Year for which that premium applies.
- (b) Premiums shall be due and payable as determined by the Trustees, in accordance with this Agreement and the Trust By-Laws.

### 3.04 Obligations, Duties and Liabilities of Participants.

- (a) Each Participant agrees to fulfill all obligations and duties set forth in this Agreement. The withdrawal or expulsion of any Participant pursuant to this Article III shall not affect this Agreement nor the Trusts created herein, except where otherwise expressly provided.
- (b) Each Participant is liable under this Agreement for the payment of premiums, contributions and assessments when due, and agrees to make an Initial Contribution upon admission to the Trust.
- (c) Each Participant will use its best efforts to provide appropriations for the payment of any contributions, premiums and assessments required by the Trust.
- (d) Each Participant agrees to institute any and all reasonable safety regulations and loss prevention procedures that may be required by the Executive Committee for the purpose of minimizing or eliminating hazards or risks that could contribute to losses. Participants have right to appeal such requirements to the Trustees, and the decision of the Trustees shall then be final.
- (e) Each Participant agrees that it will cooperate fully with the Trust's Administrator, service agent(s), attorneys, claims adjusters and any other agent or employee of the Trust in relation to the purpose and powers of the Trust, including, but not limited to, the investigation, defense and settlement of claims.
- (f) Each Participant agrees to designate a Contact Person to be responsible for all contacts with the Trust. The Trustees, the Administrator and the service agent(s) shall not be required to contact any other individual except the Contact Person in dealing with the Participant. Any notice to or any agreements with the Contact Person shall be binding upon the Participant. Each Participant reserves the right to change the Contact Person from time to time by giving written notice to the Administrator.
- (g) The Participants agree that any suit brought against them shall be defended in the name of the Participant by counsel selected by the Trustees in accordance with the Trust Coverage Document. Full cooperation shall be extended by such Participant to supply any information needed or helpful in such defense.
- (h) The Participants will furnish to the Trustees such underwriting information as may be required by the Trust prior to the end of the Trust Year, and any other information which may be requested by the Board.
- (i) Participants hereby acknowledge and agree that this Agreement may be amended, altered or modified pursuant to Article VIII hereof. Any amendment adopted pursuant to the provisions of Article VIII hereof shall be considered by each Participant to be a reasonable and proper amendment to the Agreement.
- (j) The Participants also agree to submit all coverage disputes to the appropriate subcommittee of the Board of Trustees, whose decisions shall be appealable to the entire Board. Once a decision is rendered by the Board in a coverage dispute, the Board's decision shall be final and legally binding on the Participants and the Trust. Neither the Trust nor the Participants shall have any right to challenge the Board's decision in any arbitration proceeding or in any action before any court of competent jurisdiction. That notwithstanding, the Participants and the Trust only reserve the right to file an action in such a court solely to enforce the decision by the Board.
- (k) The Participants further agree that once a decision is rendered by the Board in a dispute regarding the expulsion or withdrawal of a Participant, the Board's decision shall be final and legally binding on the Participants and the Trust. Neither the Trust nor the Participants shall have any right to challenge the Board's decision in any arbitration proceeding or in any action before any court of competent jurisdiction. That notwithstanding, the Participants and the Trust only reserve the right to file an action in such a court solely to enforce the decision by the Board.

### 3.05 Expulsion and Withdrawal of Participants.

- (a) Expulsion. The Trustees shall have the authority by an affirmative vote of two-thirds (2/3) of all Trustees to expel any Participant from the Trust for cause, including but not limited to, the following:
- (1) Failure to pay any premiums, contributions or assessments when due;
  - (2) Failure to implement a reasonable safety or loss prevention program or other failure to implement guidelines required by the consultant or manager hired by the Trust;
  - (3) Failure to cooperate with any loss control service and fiscal agents of the Trust or with any attorney representing that Participant in the defense of any claim covered under the Trust Coverage Document;
  - (4) Failure to provide any information requested by the Administrator, Board of Trustees or any agent or representative of the Trust as required for the handling, settlement or defense of any claims covered under the Trust Coverage Document;
  - (5) Knowing and willful failure to observe and perform any covenants, conditions or agreements on its part to be observed or performed in the Trust Agreement and any related document, including the Participation Agreement and the Trust Coverage Document;
  - (6) The filing of a case in bankruptcy, or the subjection of any right or interest of a Participant under the Trust Coverage Document to any execution, garnishment, attachment, adjudication of such Participant as a bankrupt, assignment by such Participant for the benefit of creditors, or the approval by a court of competent jurisdiction of a petition applicable to that Participant in any proceedings instituted under the provisions of the federal bankruptcy code, as amended, or under any similar state or federal statute which may thereafter be enacted;
  - (7) The assignment by a Participant of any right or interest in the Trust Coverage Document without first obtaining the approval of the Board of Trustees as required by the Trust Coverage Document; and



(8) Knowingly taking any action detrimental to the fiscal and/or actuarial soundness of the Trust. Expulsion shall become effective after sixty (60) days written notice to the Participant, or ten (10) days written notice for non-payment of Premium, and no liability shall accrue to the Trust after the effective date of expulsion except as provided in Section 3.05(c) hereof. The Participant whose expulsion is sought shall have a full and fair opportunity to appear before the Board and present any evidence on its behalf before the Board renders its decision in accordance with procedures adopted by the Executive Committee. All decisions by the Board of Trustees regarding the expulsion of a Participant shall be final, with no right for a further appeal or arbitration of that decision. The Participant, upon notification of expulsion by the Trustees, understands coverage will terminate and the Participant will be responsible to secure adequate provision for any and all coverages either by insurance or self-insurance so that such coverage is in effect on the effective date of the Participant's expulsion. Upon expulsion, a Participant shall forfeit any and all of its rights to any dividends and Rate Stabilization Fund monies to which it may otherwise be entitled during the last year of the Participant's membership in the Trust and all times thereafter. Upon expulsion, a Participant will be required to pay a Termination Premium and may be required to pay additional assessments as determined by the Board of Trustees. A Participant may be required to pay assessments, after the effective date of its expulsion caused by deficits which occurred because of claims which were paid while that Participant was afforded coverage under the Trust Coverage Document.

(b) Withdrawal by a Participant. As provided herein, each Participant hereby agrees that it shall not withdraw from the Trust for a period of two (2) years from the date upon which it was first admitted as a Participant. In addition, it is also agreed that each Participant may withdraw from the Trust after giving one hundred fifty (150) days prior written notice to the Trust Administrator at any time after the expiration of the two year period unless:

- (1) An opinion is rendered by the Trust's certified Actuary that such withdrawal will result in the number of Participants falling below the minimum required to assure the fiscal and actuarial soundness of the Trust itself;
- (2) That the withdrawing Participant is then in default of its obligation to pay premiums, contributions or assessments; and
- (3) The Board of Trustees shall have received a certification from the Trust actuary that the withdrawal will reduce the actuarial soundness of the Trust, and if any debt has been incurred by the Participants to finance any portion of the Trust reserves, an opinion is obtained from bond counsel that such withdrawal will adversely affect the tax exempt status of any interest paid on any debt incurred by the Participants, or any legal entity created for the purpose of incurring such debt. As used herein, the term "debt" includes any bonds, certificates, letters of credit or other instruments of municipal indebtedness.

Any Participant who withdraws from the Trust shall forfeit any and all of its rights to any dividends and Rate Stabilization Fund monies to which it may otherwise be entitled during the last year of the Participant's membership in the Trust and all times thereafter. Upon the effective date of withdrawal, or any time thereafter, a Participant may be required to pay assessments as required by the Board of Trustees in accordance with this Agreement and the By-Laws based upon any deficits which were caused by any claims paid while that Participant was provided coverage under the Trust Coverage Document. If there is a dispute over the withdrawal of a Participant, that Participant will have a full and fair opportunity to present any relevant evidence or information to the Board of Trustees who shall decide the dispute by majority vote. All decisions by the board of Trustees regarding the withdrawal of a Participant shall be final, with no right for a further appeal or arbitration of that decision.

(c) Liability of Trust after Withdrawal or Expulsion of a Participant.

- (i) For those liabilities covered on an occurrence basis by the Trust Coverage Document, the Trust shall continue to service, defend and otherwise be responsible for any claim which arose prior to expulsion or withdrawal of a Participant which is covered under Section 10.08 hereof, including incurred but not reported claims.
- (ii) For those liabilities covered on a claims made basis the Trust shall continue to service, defend and otherwise be responsible only for claims reported during a Trust Year, or a portion of a Trust Year, in which the municipality participated in the Trust, subject to any extended reporting periods agreed upon by the Trust and the Participant.
- (iii) The Trust will not cover, defend, or otherwise be responsible for, a claim which arises out of an act, error, or omission occurring after the effective date of the Participant's withdrawal or expulsion.
- (iv) In addition to forfeiture as provided in subsections 3.05 (a) and (b) above, no dividends or Rate Stabilization Fund monies shall be paid to a Participant who has been expelled from the Trust or to any Participant who has voluntarily withdrawn after the effective date of withdrawal or expulsion.

#### ARTICLE IV -ACCEPTANCE OF TRUST

4.01 Acceptance. Trustees hereby accept the trusts imposed upon them by this Agreement and agree to perform said trusts in accordance with the terms and conditions of this Agreement. Trustees shall hold legal title to all property of the Trust and shall have absolute and exclusive power and control over the management and conduct of the business of the Trust.

4.02 Future Trustees. Whenever any change shall occur in the Board of Trustees, the legal title to the property hereby created by this Trust shall pass to those duly appointed Trustees. Each future Trustee appointed in accordance with this Agreement shall accept the Office of Trustee and the terms and conditions of this Agreement in writing.

4.03 Trustees' Duties and Obligations. The Trustees shall discharge their duties and obligations under this Agreement solely in the interests of the Participants with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Trustees shall adopt By-Laws for the management and control of the Trust, so long as such By-Laws are not inconsistent or in conflict with the terms and provisions of this Agreement. Said By-Laws may be amended by the Trustees as they shall provide

4.04 Liability of Trustees.

(a) The Trustees shall not be liable for errors of judgment either in holding property originally conveyed to them, in acquiring and afterwards holding additional property, in the performance of their duties hereunder, nor for any act or omission to act, performed or omitted by them, in the execution of the trusts created hereunder.

(b) Every act done, power exercised or obligation assumed by the Trustees, pursuant to the provisions of this Agreement, or in carrying out the trusts herein contained, shall be held to be done, exercised or assumed by them as Trustees and not as individuals, and any person or corporation contracting with the Trustees, shall look only to the Trust and property of the Trust available for payment under such contract, or for the payment of any debt,

mortgage, judgment or decree or the payment of any money that may otherwise become due or payable on account of the trusts herein provided for, and any other obligation arising out of this Agreement in whole or in part, and neither the Trustees nor the Participants, present or future, shall be personally liable therefore.

(c) Notwithstanding the provisions of (a) and (b) above, a Trustee shall be personally liable in connection with the performance of his duties hereunder for his own willful misconduct or gross negligence.

(d) The Board of Trustees shall use their best efforts to purchase so-called directors and officers liability insurance.

#### ARTICLE V - OPERATION OF THE TRUSTEES

5.01 Office. The Trustees shall designate a principal office of the Trust. Such principal office shall be in the County of Montgomery in the Commonwealth of Pennsylvania. At such principal office there shall be maintained the books, reports and records pertaining to the Trust and its administration.

5.02 Meetings. There shall be an annual meeting of the Trustees on a day and at a place designated by the Trustees. At the annual meeting the Trustees shall elect a Chairman and such other officers as provided in the By-Laws and transact such other business as may come before them. The Trustees shall hold such other meetings and shall establish such procedures for the conduct of those meetings as they shall provide in the By-Laws.

5.03 Extraordinary Votes. Unless otherwise specifically stated in this Agreement, an affirmative vote of two-thirds (2/3) of all Trustees shall be required to expel or admit a Participant, amend this Agreement, or determine a prudent or necessary purpose for which money from Surplus may be used.

#### 5.04 Indemnification.

(a) The Trust shall indemnify and defend: (i) each member of the Board of Trustees and the estate, executor, administrator, personal representatives, heirs, legatees and devisees of any such person; and (ii) every officer and employee of the Trust and the estate, executor, administrator, personal representatives, heirs, legatees or devisees of such person; against all claims, suits or judgments including interest, fines, amounts paid or agreed upon in settlement, reasonable costs and expenses including attorneys, fees and any other liability that may be incurred as a result of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other, prosecuted or threatened to be prosecuted, for or on account of any act performed or omitted or obligation entered into, if done or omitted in good faith without intent to defraud and within what he reasonably believed to be the scope of his employment or authority and for a purpose which he reasonably believed to be in the best interest of and in connection with the administration, management, conduct or affairs of the Trust, and with respect to any criminal actions or proceedings, in addition, had no reasonable cause to believe that his or its conduct was unlawful. Provided, however, that if any such claim, action, suit, or proceeding is compromised or settled, it must be done with the prior and express approval of the Board of Trustees or such other persons as may be authorized to make determinations with respect to indemnification pursuant to subparagraph (d) of this Section.

(b) Such indemnification and defense shall not depend upon whether or not such person is a member of the Board of Trustees at the time such claim, action, suitor proceeding is begun, prosecuted or threatened.

(c) The right of indemnification and defense hereunder shall not be exclusive of other rights such person or Board may have as a matter of law or otherwise.

(d) In each instance in which a question of defense and/or indemnification hereunder arises, determination to indemnification hereunder, and the time, manner and amount of payment thereof, shall be made by a majority vote of a quorum of the Board of Trustees provided, however, that no member of the Board of Trustees seeking indemnification hereunder as a result of the same occurrence shall participate in the determination. In the event that a majority of the members of the Board of Trustees are seeking indemnification hereunder as a result of the same occurrence or the number of Board of Trustees members eligible to vote does not constitute a quorum, such determination in the first instance shall be made by independent legal counsel retained by the Trust for the purpose of making the determination. Nothing in this paragraph is intended to make an adverse determination finally binding upon the person seeking indemnity under this Section, or to preclude any such person from appealing an adverse determination against him or it, or from instituting legal proceedings to enforce a right of indemnification under this Section.

(e) The indemnification and defense provided for in this Section shall be deemed to be an expense of the Trust which may be paid from operating funds.

(f) The indemnification and defense provided by this Section shall be secondary to any benefits which the person may be entitled to receive from any applicable insurance policy providing Directors and officers, Errors and Omissions or other applicable insurance coverages which have been procured by the Trust or for which the Trust paid the required premium. The indemnification provided by this Section shall be primary over any indemnification provided by a trustee at his or her own expense.

(i) Notwithstanding any other provision of this Section to the contrary, a person may seek, and the Trust may pay, advance indemnification prior to the rendering of a final determination of entitlement to indemnification pursuant to the provisions of subparagraph (d) of this Section. Any award of such advance indemnification by the Trust shall be discretionary and subject to the provisions of this Section.

(ii) In each instance where a question of advance indemnification hereunder arises, determination of the right to indemnification and of any conditions or restrictions attached thereto shall be made by a majority vote of a quorum of the Board of Trustees provided, however, that no member of the Board of Trustees seeking indemnification hereunder as a result of the same occurrence shall participate in the determination. In the event that a majority of the members of the Board of Trustees are seeking indemnification as a result of the same occurrence or the number of members of the Board of Trustees eligible to vote does not constitute a quorum, such determination shall be made by independent legal counsel retained by the Trust for the purpose of making the determination.

(iii) Any determination of advance indemnification shall be discretionary and may provide for the time, manner and amounts advanced hereunder and shall include such limitations as may be deemed appropriate in the particular circumstances on rate of payment, the total amount to be advanced and the security, if required, for repayment of such advances.

(iv) Any advance authorized hereunder shall be repaid to the Trust if the person on whose behalf the advance was made is not entitled to indemnification of his costs and expenses under the provisions and in accordance with the standards for indemnification provided in this Section.

#### ARTICLE VI - PURPOSE OF THE TRUST; POWERS OF TRUSTEES

6.01 Purposes of Trust. The purposes and objectives of the Trust are as follows:

(a) To provide adequate and affordable insurance coverage for each Participant at the lowest possible cost by the pooling or sharing of certain insurance

risks;

- (b) To reduce the amount and frequency of losses incurred by each Participant which are covered under the Trust Coverage Document;
- (c) To minimize costs incurred by Participants in the handling and litigation of claims;
- (d) To protect each Participant from the volatility and high premiums of the commercial insurance markets; and
- (e) To take whatever other action which may be necessary to preserve and protect the fiscal and actuarial integrity of the Trust, as required in the Trust Agreement and By-Laws.

The association being formed hereunder is intended to be a trust under the laws of the Commonwealth of Pennsylvania.

It is the express intent of the Participants entering into this Trust Agreement that they do not intend to waive, and are not waiving, any of the immunities which they or their commissioners, supervisors, council persons, officers or employees have now, and may have in the future, under the Pennsylvania Political Subdivision Tort Claims Act, any other applicable statutes or under the common law.

6.02 Powers of Trustees. The Trustees shall have the power to control and manage the Trust and to perform such acts, enter into such contracts, engage in such proceedings, and generally to exercise any and all rights and privileges, although not specifically mentioned herein, as the Trustees may deem necessary or advisable to administer the Trust or to carry out the purposes of this Agreement. Any determination made by the Trustees in the exercise of these powers shall be binding upon all Participants. In addition to the powers set forth elsewhere in this Agreement, the powers and duties of the Trustees in connection with their managing and controlling the Trust shall include, but shall not be limited to, the following:

- (a) To see that the Trust is safely and prudently administered to insure its financial stability and to be responsible for the investment of Trust monies at the best return possible in accordance with all applicable state and federal law.
- (b) To receive, hold, manage, invest, reinvest, and control all monies at any time forming part of the Trust.
- (c) To purchase contracts of insurance or reinsurance through such broker or brokers as the Trustees may choose and to pay premiums on such policies.
- (d) To borrow or raise money for the purpose of financing any self-insurance reserves of the Trust to the extent authorized under state and federal law. However, no municipal debt shall be incurred by the Trust, its participating municipalities or any entity created for that purpose without the consent of all participating municipalities and compliance with all state and federal law.
- (e) To hold cash, uninvested, for such length of time as the Trustees may determine without liability for interest thereon.
- (f) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance, including, but not limited to, deeds, leases, mortgages, conveyances, contracts, waivers and releases, and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.
- (g) To employ suitable agents, advisors and other persons as the Trustees may deem necessary and advisable for the efficient operation and administration of the Trust, to delegate duties and powers hereunder to such agents, advisors and employees and to charge the expense thereof to the Trust. Trustees are entitled to rely upon and may act upon the opinion or advice of any attorney or Service Agent approved by the Trustees in the exercise of reasonable care. Trustees shall not be responsible for any loss or damage resulting from any action or non-action made in good faith reliance upon such opinion or advice. All delegated authority shall be specifically defined in the By-Laws or the written minutes of the Trustees' meetings.
- (h) To continue to have and to exercise, after the termination of the Trust and until final distribution, all of the title, powers, discretion, rights and duties conferred or imposed upon the Trustees hereunder, or by law.
- (i) To construe and interpret this Trust Agreement and any related documents, including the Participation Agreement, By-Laws, and the Trust Coverage Document.
- (j) To receive from Participants and other relevant sources, such information as shall be necessary for the proper administration of the Trust.
- (k) To maintain bank accounts for the administration of the Trust and to authorize certain Trustees, the Trust Administrator, Service Agents or other appropriate persons to make payments from any such account for purposes of the Trust.
- (l) To receive and review reports of the financial condition and of the receipts and disbursements of the Trust.
- (m) To adopt By-Laws, rules, regulations, formulas, actuarial tables, forms, and procedures by resolution from time to time as they deem advisable and appropriate for the proper administration of the Trust, including membership criteria, provided the same are consistent with the terms of this Agreement.
- (n) To have a judicial settlement of their accounts and judicial determination of any questions in connection with their duties and obligations hereunder, or in connection with the administration or distribution thereof. The costs and expenses, including accounting and legal fees, for such judicial settlement of accounts or other judicial determination shall be paid by the Trust as a general administrative expense to the extent permitted by applicable law.
- (o) To purchase as a general administrative expense of the Trust so-called directors and officers liability insurance and any other types insurance for the benefit of the Trust, the Trustees, Trust employees, or agents, including group insurance, employee benefits and social security.
- (p) To enter into any and all contracts and agreements for carrying out the terms of this Agreement and for the administration and operation of the Trust and to do all acts as they, in their discretion, may deem necessary or advisable, and such contracts and agreements and acts shall be binding and conclusive on Participants and Participants, employees. All such contracts and agreements, or other legal documents herein authorized, shall be approved by the Trustees and shall be executed by individuals authorized by the Trustees. This paragraph does not apply to the issuance of municipal debt for the funding of any self-insurance reserves.
- (q) To write off as uncollectible any Participant's Premium or any other indebtedness or other obligation as the Trustee may deem appropriate. A decision to write off as uncollectible shall be deemed appropriate if the Trustees determine that the unlikelihood of collection or the anticipated expense of collecting justifies such action. This paragraph does not apply to the issuance of municipal debt for the funding of any self-insurance reserves.
- (r) To receive premiums, contributions or assessments from any source whatsoever but such premiums, contribution or payments may not be utilized for any purpose unrelated to the purposes herein provided.
- (s) To pay or contest any claim or to settle a claim by or against the Trust or any of its Participants by negotiation, compromise, arbitration, or otherwise.
- (t) To pay taxes, assessments, and other expenses incurred in the collection, care, administration, and protection of the Trust.
- (u) To review Applications for memberships in the Trust submitted to them and to approve or disapprove such Applications.
- (v) To expel or cancel the coverage of any Participant in accordance with the terms of this Agreement.
- (w) To amend the Trust Coverage Document by two thirds (2/3) majority vote as provided in that Document.
- (x) To make provision for proper accounting and reporting procedures for each of the Participants so that the Participants shall be informed at all times of the nature of the claims arising within their jurisdiction, the manner in which these claims are being handled, and the impact of those claims upon the Trust.
- (y) To purchase an employee fidelity bond covering the Trustees, the Administrator and such others as the Trustees may determine.
- (z) To require assessments from each Participant in an amount equal to the ratio of that Participant's annual premium to the total annual premium contributed by all Participants in the year in which a deficit occurred. Such payment shall not exceed two (2) times the Participant's annual premium for

the year in which the assessment must be paid. Such amounts shall be certified by the Board as necessary for that purpose to the Participants.

(aa) To hold all property received by the Trustees, which together with the income and gains therefrom and additions thereto, shall constitute the corpus of the Trust.

(bb) To appoint for a fee or otherwise, a Trust Administrator who shall act at the direction of the Trustees to implement the decisions of the Trustees and to have direct responsibility for the operation and supervision of the Trust. The Trust Administrator shall not be an owner, officer or employee of the Service Agent or broker of the Trust.

(cc) To employ and oversee one or more independent service companies and/or consultants to act as Service Agent(s). The services of a Service Agent shall be performed pursuant to a written agreement between the Service Agent and the Trust, and the Service Agent(s) shall be compensated from the Trust for such services. The Trustees may delegate to a Service Agent responsibility for underwriting matters, claims administration and disbursement, collection of Premiums, and other duties as are specified in the Service contract. The Trustees shall require any Service Agent who handles monies of the Trust to furnish an employee fidelity bond indemnifying the Trust. The proper limit of liability to be set for such bond shall be as determined by the Trustees, but not less than a fifty thousand (\$50,000) dollar limit per loss should be established.

(dd) To employ counsel to advise and represent the Trustees on legal matters relating to the operation and administration of the Trust, and represent Participants in the defense of claims or suits.

(ee) To employ an independent certified public accountant to conduct an annual audit of the financial statements of the Trust at the close of the Trust Year, such audit report to be submitted to the Participants no more than six (6) months after the close of the Trust Year.

(ff) To employ a Fiscal Agent and delegate to it the duties to hold the moneys of the Trust and to invest and reinvest funds in accordance with the requirements of the Agreement.

(gg) To appoint any subcommittees of the Board as may be necessary for the operation of the Trust.

(hh) To employ an actuarial firm to review, at least annually, the expected losses, IBNR calculations and recommend surplus requirements for the Trust.

(ii) At least annually, to review, study, and consider the claims payments of each of the Participants, the pro-rata savings to the Trust resulting from overall loss experience attributed to each of the Participants, the pro rata portion of any investment earnings of the Trust attributed to each Participant and the pro rata portion of the cost of all excess insurance allocated to each Participant, as well as the pro rata allocation as determined by the Trustees of the other and necessary administrative expenses of the Trust, in order reasonably to determine the actual pro rata costs, expense and loss experience of each Participant in order to maintain as nearly as possible an equitable and reasonable administration of the Trust as applied to each Participant.

(jj) To fully and finally resolve all coverage disputes between Participants and the Trust and any disputes regarding the withdrawal or expulsion of any Participants; and

(kk) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary in the best interests of the Trust.

6.03 Payment of Claims and Coverage Disputes. The Executive Committee shall be responsible for adopting guidelines for the handling and payment of claims. The decision of whether to settle or pay a claim shall be made in the first instance by the manager responsible for claims handling, acting under the general supervision of the Trust Administrator. The decision to settle or defend a claim may then be reviewed by the Executive Committee, whose decision may be reviewed by the Board of Trustees at the request of the Participant. A decision by the entire Board to settle a particular claim made against a Participant shall be final. A refusal by a Participant to consent to such a settlement or execute the documentation required to effect a settlement, shall relieve the Trust from any further obligation to defend that Participant under the provisions of the Trust Coverage Document.

Any disputes between a Participant and the Trust as to whether a particular claim is covered under the provisions of the Trust Coverage Document shall be decided in accordance with the coverage dispute resolution procedures adopted by the Board of Trustees. Coverage disputes shall include the refusal to defend or indemnify a Participant or Covered Party, or discontinue or withdraw a defense of a Participant or Covered Party. The findings and recommendations of the five member subcommittee of the Board ("Appeals Committee") may be submitted to the entire Board at the request of the Participant or Covered Party. A decision by a majority of the Board adopting, amending or rejecting the findings and recommendations of the Appeals Committee shall be final and legally binding on the Trust and the Participant involved in the coverage dispute, with no right to challenge the Board's decision before any arbitration panel or court of competent jurisdiction. The Trust and the Participant do, however, reserve the right to enforce the Board's decision by filing an appropriate action in any court of competent jurisdiction.

## ARTICLE VII - OPERATION OF THE TRUST FUNDS; REVENUES

7.01 Payment of Premiums, Contributions and Assessments. Each Participant hereby agrees to make payments into various funds established under the Trust as set forth below:

(a) Initial Contribution - The initial payment made by all Participants upon their admission to the Trust which shall include:

(1) An amount to provide for losses and general operating expenses of the Trust;

(2) A contribution to Surplus; and

(3) Any amounts which must be dedicated to debt service as required by the Board of Trustees in the event that municipal indebtedness is incurred for risk financing purposes.

(b) Annual Premiums - Annual premiums must be paid by each Participant as a condition for obtaining coverage for a single coverage period. These premiums shall be established, and may be adjusted upward or downward on an annual basis, by the Executive Committee in accordance with this Agreement and the Trust By-Laws. Premiums shall be determined by the Executive Committee in accordance with the guidelines adopted by the Executive Committee based upon the actual claims or loss histories of each Participant. Premiums shall include:

(1) An amount to provide for losses and general operating expenses of the Trust;

(2) A contribution to Surplus, as required by the Executive Committee; and

(3) Any amounts which must be dedicated to debt service as required by the Board of Trustees in the event that municipal indebtedness is incurred for risk financing purposes.

(c) Assessments - Any additional payments to the Trust which a Participant may be required to make upon a finding by the Board of Trustees, Underwriting Consultant, and the Trust Actuary that funds available for the payment of claims have been exhausted by, among other things, the payment of catastrophic claims and such assessments are required to preserve the fiscal and actuarial soundness of the Trust and its ability to pay claims and otherwise satisfy any outstanding indebtedness.

All assessments shall be made in an amount equal to the ratio of the Participant's annual premium to the total annual premium contributed by all Participants in the Trust year in which a deficit occurred. No Participant shall be required to pay any assessments in a single Trust year greater than two times the annual premium paid by that Participant for the Trust year in which the assessment is to be made.

After the withdrawal or expulsion of a Participant, that Participant shall remain liable for any assessments for any periods during which that Participant was provided coverage under the Trust Coverage Document.

(d) Termination Premium – Upon recommendation of the Executive Committee, the Board of Trustees shall determine the amount of the Termination Premium due and owing on or after the effective date of a Participant's expulsion, as the Board of Trustees may determine. The Termination Premium shall be sufficient to pay any outstanding premiums and assessments due and owing on the effective date of the Participant's expulsion. An initial estimate of the Termination Premium shall be determined by the Board of Trustees at least forty-five (45) days before the effective date of a Participant's expulsion, and a final Termination Premium shall be determined no later than sixty (60) days after that effective date of the Participant's expulsion.

(e) After the withdrawal or expulsion of a Participant, that Participant shall remain liable for any assessments for any periods during which that Participant was provided coverage under the Trust Coverage Document.

(f) All premium estimates and assessments shall be determined by the Executive Committee at least thirty (30) days before the commencement of the Trust year during which those payments must be made by the Participants. This will permit the Participants to adequately budget and appropriate the sums needed for those payments.

7.02 Establishment of Bank Accounts . The Trust Administrator shall establish one or more bank accounts, which may be interest or non-interest bearing accounts, with the Fiscal Agent in the name of the Trust.

7.03 Dividends and Rate Stabilization Fund.

(a) Dividends - Subject to Section 3.05 of this Agreement, any funds in Surplus as the Trustees may deem necessary or prudent may be returned to the Participants by the Board of Trustees. Dividends paid to each Participant will be based upon the loss experience of the Trust as a whole, the size of each Participant's Premiums, and the loss experience of the individual Participant. No dividends shall be paid to any Participant unless the Underwriting Consultant certifies to the Executive Committee that said dividends shall not adversely affect the fiscal or actuarial soundness of the Trust and its ability to satisfy any indebtedness incurred by the Trust, any Participant or any other entity on behalf of the Trust in furtherance of its purposes and objectives. When municipal debt has been incurred by the Trust, its Participants, or any other entity created for that purpose, an additional certification will be required from Bond Counsel that such dividends will not adversely affect the tax exempt status of any outstanding municipal debt.

(b) Rate Stabilization Fund ("RSF"). A fund established by the Board of Trustees as a way of returning surplus funds to Participants to be used as credits toward the payment of their annual premiums upon renewal. The total amount appropriated for the RSF is determined by the Executive Committee. Each Participant receives a share of that appropriation based on their proportion of the total annual premiums paid to the Trust and the losses incurred by the Trust.

7.04 Deficits. In the event of a deficit for any Trust Year, the deficit shall be made up from any of the following:

- (1) Any premiums paid by the Trust Participants;
- (2) Unencumbered funds, including monies from the Surplus; and
- (3) Any assessments paid by Participants as required by the Board of Trustees in and in the event the Surplus is exhausted by, among other things, the payment of catastrophic claim(s).

7.05 Bonds. The Trustees shall require that a fidelity bond be furnished as to all persons handling money for or on behalf of the Trustees.

## ARTICLE VIII - AMENDMENTS

8.01 Amendments Not Requiring Consent of Trustees.

The terms and provisions of this Agreement may be amended at any time by a two-thirds (2/3) vote of the Executive Committee for one (1) or more of the following purposes:

- (a) To cure any ambiguity, defect or omission in this Agreement;
- (b) To change or modify any provision of this Agreement so as to comply with any applicable law, regulation or administrative ruling which may be in effect

8.02 Amendments Requiring Consent of Trustees. The Board of Trustees by a two-thirds (2/3) vote may consent to and approve any other amendments approved by a two-thirds (2/3) vote of the Executive Committee and presented to the Board, as shall be deemed necessary and desirable by the Board for the purpose of modifying, altering or amending, adding to or rescinding any of the terms or provisions contained in this Agreement, including, but not limited to, the inclusion of additional types of insurance coverages, subject to the limitations contained in Section 8.03 hereof. The Executive Committee shall prescribe rules and procedures for submission of proposed amendments to the Board.

8.03 Limitation on Amendments. No amendment shall be adopted which alters the basic purpose of the Trust or alters the rights of Participants to receive dividends as provided in Section 7.03 hereof or alters the obligation of Participants to pay any assessments or contributions which may be established under Section 7.01 hereof, which amendments would jeopardize the actuarial and fiscal soundness of the Trust.

## ARTICLE IX - TERMINATION

9.01 Term of Trust. The Trust shall continue unless and until terminated pursuant to law or by an instrument in writing signed by two-thirds (2/3) of the entire Board of Trustees, acting on behalf of the Participants.

9.02 Termination of the Trust. In the event of termination of the Trust, the Participants covenant and agree to make any provision for the payment of any outstanding municipal indebtedness and for the payment of claims against the Trust or its Participants as may be required by the Board of Trustees, including the deposit with the Trust of funds, surety bonds, or such other guarantees of payment as deemed required and sufficient by the Trustees. Upon termination, the Trustees shall continue to serve as Trustees to wind up the affairs of the Trust, including providing for all outstanding obligations, and each Participant shall be entitled to receive distribution of its pro rata share of any remaining funds, the calculation of such distribution to be determined by the Trustees.

## ARTICLE X - MISCELLANEOUS

10.01 Title to the Trust. Title to the Trust shall be vested in and remain exclusively in the Trustees to carry out the purposes hereunder and no Participant or any official, employee or agent of any Participant nor any individual shall have any right, title or interest in the Trust nor any right to Premiums made or to be made thereto, nor any claim against any Participant on account thereof, except to the extent of the right of Participants to receive their pro rata share of any excess funds as provided hereunder.

No Participant may assign any right, claim or interest it may have under this Agreement.

10.02 Execution of Documents. The Trustees may authorize any Trustee or the Administrator to execute any notice, certificate or other written instrument relating to the Trust (except an instrument of amendment or termination) and all persons, partnerships, corporations, or associations may rely upon such notice or instrument so executed as having been duly authorized and as binding on the Trust and the Trustees.

10.03 Notice. All notices, requests, demands and other communications related to this Agreement, unless otherwise so provided herein, shall be in writing and shall be deemed to be duly given when sent by first-class, registered, or certified mail postage paid, return receipt requested, when personally delivered by hand, or when transmitted by electronic means, at such addresses as have been last provided to the Trust. The initial address for such notices, requests, demands or other communications to the Trustees and each Participant shall be provided to the Administrator. The parties shall notify the Administrator as to any change in address.

10.04 Construction. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

10.05 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, by the Trustees and the Chief Executive officer or Manager of the local agency or municipality, of a counterpart signature page in the forms attached hereto, which together with this Agreement and all other duly executed signature pages shall constitute the complete Agreement among all the parties hereto.

10.06 Subrogation. Each Participant agrees that in the event of the payment of any loss by the Trust under this Agreement, the Trust shall be subrogated to the extent of such payment to all the rights of the Participant against any person or other entity legally responsible for damages for said loss, and in such event the Participant hereby agrees to render all reasonable assistance, other than pecuniary, to effect recovery.

10.07 Defense by Trust. The Trust shall have a duty to defend all Participants and Covered Parties against claims as set forth in the Trust Coverage Document, which is incorporated herein by reference.

10.08 Limitation of Liability. Liability of the Trust to any Participant is specifically limited to those coverages provided in the Coverage Document subject to any deductible amounts. Participants' liability shall be limited to the extent of the financial contributions to the Trust set forth herein, and any additional obligations as may come about through amendment hereto, including an obligation to repay any municipal debt as may be incurred by the Trust, its Participants or any entity created for that purpose. No Participant agrees or contracts herein to be held responsible for any claims in tort, contract or otherwise made against any other Participant. Nothing contained in this Agreement or in the By-laws thereto or the Coverage Document shall be deemed to create any relationship of surety, indemnification or responsibility between Participants for the debts of or claims against any other Participant.

10.09 Arbitration. With the exception of coverage disputes and disputes regarding the expulsion or withdrawal of Participants, all other disputes between a Participant and the Trust arising under this Agreement must be resolved by an arbitration panel or some other alternative dispute resolution entity selected by the parties in accordance with guidelines and procedures adopted by the Board of Trustees upon recommendation of the Executive Committee. As to any and all disputes arising under this Agreement, neither the Trust nor the Participant may file suit in any court of law except to enforce a decision by the Board of Trustees, arbitration panel or other alternative dispute resolution entity.

10.10 General Representations of Participants.

(a) The Participant is a body corporate and politic, a political subdivision of the Commonwealth of Pennsylvania, authority or intergovernmental entity under Pennsylvania law. The Participant has the power to enter into this Agreement and any other documents in connection herewith and the transactions contemplated hereunder and thereunder. The party executing this Agreement on behalf of the Participant has full power and authority to execute same and any documents executed in connection herewith.

(b) This Agreement has been duly and validly executed and is a valid and binding agreement on the Participant under the laws of the Commonwealth of Pennsylvania, enforceable in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting creditors' rights generally and such principles of equity as the court, in its discretion, may impose with respect to remedies which may require enforcement by a court of equity.

10.11 Severability of Invalid Provisions. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and the remaining parts of this Agreement shall be construed so as to give practical realization to the purposes intended to be achieved by the parties as if such invalid or illegal or unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, the Trustees, have executed this Trust Agreement, all as of the date above first mentioned.